

1 HONORABLE RONALD B. LEIGHTON  
2  
3  
4  
5  
6  
7  
8

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

9 DEREK SPARKS,  
10 Plaintiff,

11 v.  
12

SOUTH KITSAP SCHOOL DISTRICT  
and DAVE LAROSE, an individual,

13 Defendant.  
14

CASE NO. C13-5682RBL

ORDER DENYING MOTION FOR  
SUMMARY JUDGMENT

[DKT. #46]

15 THIS MATTER is before the Court on Defendants' Motion for Summary Judgment [Dkt.  
16 #46]. A reading of the materials convinces this Court that there are disputed facts as to every  
17 legal claim by plaintiff and for that reason the motion must be DENIED as to all causes of action  
in plaintiff's Complaint.

18 **I. SUMMARY JUDGMENT STANDARD**

19 Summary judgment is proper "if the pleadings, the discovery and disclosure materials on  
20 file, and any affidavits show that there is no genuine issue as to any material fact and that the  
21 movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). In determining  
22 whether an issue of fact exists, the Court must view all evidence in the light most favorable to  
23 the nonmoving party and draw all reasonable inferences in that party's favor. *Anderson Liberty*  
24

*Lobby, Inc.*, 477 U.S. 242, 248-50 (1986); *Bagdadi v. Nazar*, 84 F.3d 1194, 1197 (9th Cir. 1996). A genuine issue of material fact exists where there is sufficient evidence for a reasonable factfinder to find for the nonmoving party. *Anderson*, 477 U.S. at 248. The inquiry is “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Id.* At 251-52. The moving party bears the initial burden of showing that there is no evidence which supports an element essential to the nonmovant’s claim. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Once the movant has met this burden, the nonmoving party then must show that there is a genuine issue for trial. *Anderson*, 477 U.S. at 250. If the nonmoving party fails to establish the existence of a genuine issue of material fact, “the moving party is entitled to judgment as a matter of law.” *Celotex*, 477 U.S. at 323-24.

## II. FACTS

Plaintiff was hired by the South Kitsap School District as a provisional employee in 2009. The contract was subject to non-renewal by the Board of Directors in the first and/or second year of employment. He was hired as a career counselor. During the second year of plaintiff's employment the District's Board of Directors voted to "non-renew" plaintiff's contract. The reason given for the non-renewal of plaintiff's contract was abuse of sick leave, abuse of professional leave, and lying to human resources about the uses of sick leave and professional leaves.

Plaintiff claims that the decision was racially motivated. He says that every occasion of sick leave and professional leave which is the subject of the termination was authorized by his supervisor – Dr. Thomas Mosby. Moreover, he claims that he was subjected to disparate treatment because of his race. Further, he alleges a hostile work environment persisted in his

1 case because of a series of racially charged comments to him, and about him by other teachers  
2 at the school. Finally, he claims he was fired for retaliation because of his complaints to his  
3 supervisors about the treatment he received from his colleagues.

4 These factual allegations are repeated and bundled into legal claims under 42 U.S.C. §  
5 1981, as well as the Washington Law Against Discrimination (Chapter 49.60 RCW) and  
6 common law claims for Breach of Employment Contract, Wrongful Termination Against Public  
7 Policy, and Intentional Infliction of Emotional Distress. They implicate federal and state statutory  
8 schemes and the common law. Because every fact of this story is hotly disputed, the Court must  
9 deny, out of hand, defendants' motion.

10 Both sides in this dispute live in parallel universes. Sparks says that each time he took  
11 professional leave (during October 2010, November 2010, and April 2010), and each time he  
12 took sick leave (during December 2010 and March 2011), he did so with the authorization and  
13 blessing of his supervisor, Dr. Thomas Mosby. Mosby denied to investigators that he approved  
14 the leaves. Evaluation of Credibility is the province of the jury. Fact finding is not proper within  
15 the context of a summary judgment proceeding.

16 In the same vein, Sparks accuses three colleagues of racial remarks that were hurtful and  
17 intended to be hurtful. James Fairweather and Dave Neighbors are alleged to have referred to  
18 Derek Sparks as a "n\*\*\*\*" or as an "uppity n\*\*\*\*" on separate occasions. Fairweather and  
19 Neighbors emphatically deny such statements. Plaintiff Sparks alleges that Sandy Elton referred  
20 to Derek Sparks as "chocolate" or as the "chocolate candidate" several times during Sparks'  
21 tenure as an employee of South Kitsap School District. Elton, for her part, denies ever referring  
22 to Sparks as chocolate.

23  
24

1 Sparks challenges the fairness of the investigation leading up to his termination. Greg  
2 Roberts was handling the investigation of the sick leave/professional leave issues. Roberts  
3 challenged Sparks' decision to have representatives of the NAACP during the hearings.  
4 Superintendant LaRose allegedly pressured Derek Sparks to resign or "he would never work  
5 again in education." Again, LaRose emphatically denies this accusation.

6 There are other issues large and small that are contested and form a part of the tapestry of  
7 this case. With so much in dispute there is no point to recite it all in a "summary" proceeding.  
8 Suffice it to say, this case was destined for trial and the time and effort to mount the summary  
9 judgment motion would have been better spent on trial preparation.

10 Defendants' Motion for Summary Judgment [Dkt. #36] is **DENIED**.

11 **IT IS SO ORDERED.**

12 Dated this 16<sup>th</sup> day of December, 2014.

13   
14

15 RONALD B. LEIGHTON  
16 UNITED STATES DISTRICT JUDGE  
17  
18  
19  
20  
21  
22  
23  
24